

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

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JOHN PYLE,

Plaintiff,

- against -

GETTY IMAGES (US), INC.; ART.COM,  
INC.; PHOTO FILE, INC.,

Defendants.  
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: Case 1:16-cv-01647-JGK  
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: **DEFENDANT GETTY IMAGES'**  
: **ANSWER AND DEFENSES TO**  
: **THE COMPLAINT**  
:

Defendant Getty Images (US), Inc. ("Getty Images") answers the complaint of Plaintiff

John Pyle as follows:

**NATURE OF THE ACTION AND RELIEF SOUGHT**

1. This is an action for copyright infringement and related claims brought against Defendants by Plaintiff, the owner of copyrights in a creative work that was used without license or permission by Defendants.

**ANSWER:** Getty Images admits Mr. Pyle purports to assert the claims identified in paragraph 1, denies he is entitled to relief under any theory, and otherwise denies the allegations in paragraph 1.

2. Plaintiff seeks damages and other relief related to Defendants' willful infringement of Plaintiff's copyrights in the original photographic work identified in Exhibit 1 and which is the subject of this action.

**ANSWER:** Getty Images admits Mr. Pyle seeks the remedies identified in paragraph 2, denies he is entitled to those remedies, and otherwise denies the allegations in paragraph 2.

### **JURISDICTION AND VENUE**

3. Jurisdiction for Plaintiff's claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101, et seq., and 28 U.S.C. § 1338(a) (conferring original jurisdiction over claims arising under any act of Congress relating to copyrights).

**ANSWER:** Paragraph 3 states a legal conclusion to which no response is required. Getty Images admits this Court has subject matter jurisdiction over the claims in this matter.

4. Venue is proper in this Court under 28 U.S.C. §§ 1391(a) and (b) because Defendants conduct substantial business within the State of New York, have infringed Plaintiff's copyright within the State of New York as described herein, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the State of New York.

**ANSWER:** Paragraph 4 states legal conclusions to which no response is required. Getty Images admits venue is proper in this Court and otherwise denies the allegations in paragraph 4.

5. Defendants infringed Plaintiff's copyright in this District.

**ANSWER:** Getty Images denies the allegations in paragraph 5.

### **PARTIES**

6. Plain John Pyle is a professional photographer who makes his living by taking and licensing his photographs.

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and therefore denies those allegations.

7. Defendant Getty Images, a New York corporation, is the world's largest aggregator and licensor of stock photography, including sports-related photo collections.

**ANSWER:** Getty Images admits it is a New York corporation and the world's largest aggregator and licensor of stock photography and denies the remaining allegations in paragraph 7.

8. Defendant Art.com, a Delaware corporation, is a large online retailer of art and photography prints.

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8, and therefore denies those allegations.

9. Defendant Art.com owns and operates the website Allposters.com.

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9, and therefore denies those allegations.

10. Defendant Photo File is a New York corporation with its principal place of business at 333 N. Bedford Road, Mount Kisco, New York.

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10, and therefore denies those allegations.

11. Defendant Photo File operates a sports memorabilia business primarily through its website located at [www.photofile.com](http://www.photofile.com).

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11, and therefore denies those allegations.

### **FACTUAL ALLEGATIONS**

12. Plaintiff is the sole author of and exclusive owner of all copyrights in and to a photograph of former offensive lineman for the University of Southern California (USC) Trojans, Matt Kalil (the “Photograph”), a copy of which is attached hereto as “EXHIBIT 1.”

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, and therefore denies those allegations.

13. Plaintiff registered his copyright in the Photograph with the United States Copyright Office.

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13, and therefore denies those allegations.

14. Without permission or license from Plaintiff, Defendant Art.com published a copy of the Photograph on its website Allposters.com where it offered for sale prints of the Photograph in various sizes. A screenshot of the Photograph being offered for sale on Defendant Art.com’s website without permission is attached hereto as “EXHIBIT 2.”

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14, and therefore denies those allegations.

15. Without permission or license from Plaintiff, Defendant Photo File published a copy of the Photograph on its website where it is offering for sale prints and other memorabilia

featuring copies of the Photograph. A screenshot of the Photograph being offered for sale on Photo File's website without permission is attached hereto as "EXHIBIT 3."

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15, and therefore denies those allegations.

16. Upon information and belief, Defendant Getty Images provided a digital copy of the Photograph to Defendant Photo File knowing that Photo File intended to make commercial uses of the Photograph, including by selling copies of prints and other memorabilia that featured copies of the Photograph.

**ANSWER:** Getty Images admits it licensed to Photo File a digital copy of the photograph at issue in this lawsuit and that the license permitted commercial (among other) uses. Getty Images otherwise denies the allegations in paragraph 16.

17. Getty Images did not have a license or authority to offer/grant commercial-use licenses of the Photograph or to provide a copy of the Photograph to other companies, including Photo File, for commercial uses.

**ANSWER:** Getty Images denies the allegations in paragraph 17.

18. Plaintiff is not a contributing photographer for Defendant Getty Images and has never licensed his photos through Getty Images.

**ANSWER:** Getty Images admits it does not have and has never had a direct contributor agreement with Mr. Pyle and states that the image at issue was provided to it by one of its image partners. Getty Images denies the remaining allegations in paragraph 18.

19. Defendants' copying, publishing, and other uses of the Photograph alleged herein are unauthorized infringing. Defendants have profited from their unauthorized use of the Photograph.

**ANSWER:** Getty Images denies the allegations in paragraph 19.

**COUNT I**  
**COPYRIGHT INFRINGEMENT**  
**AGAINST ALL DEFENDANTS**

20. Plaintiff repeats and re-alleges each allegation above as if set forth fully herein.

**ANSWER:** Getty Images incorporates and repeats as if fully set forth herein its responses to the allegations in paragraphs 1 through 19 of the complaint.

21. Plaintiff is the author and registered copyright owner of the Photograph.

**ANSWER:** Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, and therefore denies those allegations.

22. Upon information and belief, Plaintiff registered his copyright in the Photograph prior to Defendants' unauthorized and infringing use of the Photograph.

**ANSWER:** Getty Images denies that use of the photograph at issue was unauthorized or infringing. Getty Images lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 22, and therefore denies those allegations.

23. Defendants made unauthorized copies and uses of Plaintiff's Photograph as alleged in more detail above.

**ANSWER:** Getty Images denies the allegations in paragraph 23.

24. Defendants' unauthorized copying, distributing, displaying, publishing, and otherwise exploiting of the Photograph infringed Plaintiff's copyrights and caused Plaintiff significant injuries, damages, and losses in amounts to be determined at trial.

**ANSWER:** Getty Images denies the allegations in paragraph 24.

25. Defendants' infringements were willful, knowing, intentional and/or reckless.

**ANSWER:** Getty Images denies the allegations in paragraph 25.

26. Plaintiff seeks all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendants' profits attributable to the infringements, and damages suffered as a result of the lack of compensation, credit, and attribution from any diminution in the value of Plaintiff's copyrighted work.

**ANSWER:** Getty Images admits Mr. Pyle seeks the relief identified in paragraph 26, denies that he is entitled to any such relief, and otherwise denies the allegations in paragraph 26.

27. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

**ANSWER:** Getty Images admits Mr. Pyle seeks the relief identified in paragraph 27, denies that he is entitled to any such relief, and otherwise denies the allegations in paragraph 27.

**COUNT II**  
**CONTRIBUTORY AND VICARIOUS COPYRIGHT INFRINGEMENT**  
**AGAINST GETTY IMAGES**

28. Plaintiff repeats and re-alleges each allegation above as if set forth fully herein.

**ANSWER:** Getty Images incorporates and repeats as if fully set forth herein its responses to the allegations in paragraphs 1 through 27 of the complaint.

29. Upon information and belief, Defendant Getty Images copied, published, and displayed Plaintiff's Photograph on its online database.

**ANSWER:** Getty Images admits it made available for licensing the photograph at issue in this case, including on its website. Getty Images otherwise denies the allegations in paragraph 29.

30. Upon information and belief, Defendant Photo File obtained a copy of the Photograph from Getty Images.

**ANSWER:** Getty Images admits the allegations in paragraph 30.

31. At the time that it provided copies and/or access to Plaintiff's Photograph to Defendant Photo File, Getty Images knew or had reason to know that Photo File intended to



make commercial uses of the Photograph, including selling prints and other memorabilia featuring copies of the Photograph.

**ANSWER:** Getty Images admits it licensed a digital copy of the photograph at issue in this lawsuit and that the license permitted commercial (among other) uses. Getty Images otherwise denies the allegations in paragraph 31.

32. Getty Images thus knowingly caused, enabled, induced, and/or materially contributed to the unauthorized and infringing use of Plaintiff's Photograph by Defendants Photo File and Art.com.

**ANSWER:** Getty Images denies the allegations in paragraph 32.

33. Getty Images was not authorized to distribute, use, license, or provide access to Plaintiff's Photograph for commercial purposes.

**ANSWER:** Getty Images denies the allegations in paragraph 33.

34. Getty Images had the practical ability to control the directly infringing acts carried out by the other Defendants, primarily by not providing the Defendants with copies of and/or access to Plaintiff's Photograph.

**ANSWER:** Paragraph 34 calls for a legal conclusion to which no response is required. Getty Images otherwise denies the allegations in paragraph 34.

35. Upon information and belief, Getty Images benefited financially from the unauthorized and infringing use of Plaintiff's Photograph by Defendant Photo File, including through its continued licensing arrangement and business relationship with Photo File.

**ANSWER:** Getty Images denies the allegations in paragraph 35.

36. Plaintiff seeks all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendant's profits attributable to the infringements, and damages suffered as a result of the lack of compensation, credit, and attribution and from any diminution in the value of Plaintiff's copyrighted work. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

**ANSWER:** Getty Images admits Mr. Pyle seeks the relief identified in paragraph 36, denies that he is entitled to any such relief, and otherwise denies the allegations in paragraph 36.

#### **PRAYER FOR RELIEF**

The remainder of the Complaint is a request for relief to which no response is required. To the extent a response is required, Getty Images denies Mr. Pyle is entitled to any of the relief sought.

#### **AFFIRMATIVE DEFENSES**

Getty Images sets forth below its affirmative defenses. By setting forth these affirmative defenses, Getty Images does not assume any burden of proof as to any fact issue or other element of any cause of action that properly belongs to Mr. Pyle. Getty Images reserves the right to amend or supplement its affirmative defenses.

1. ***Fault of Third Parties.*** The Complaint is barred, in whole or in part, because any damages allegedly suffered by Mr. Pyle were either wholly or in part the legal fault of persons, firms, corporations, or entities other than Getty Images.

2. ***License.*** The Complaint is barred, in whole or in part, by a license that authorized the use and distribution of the work at issue here.

3. ***Innocent Intent.*** Mr. Pyle's claims are barred, or his remedies limited, because Getty Images' use, if any, of the photograph at issue was made with innocent intent and without any belief that any of its acts constituted an infringement or violation.

4. ***Estoppel.*** Mr. Pyle's claims are barred in whole or in part by estoppel.

5. ***Lack of Registration.*** On information and belief, Mr. Pyle's claims are barred, in whole or in part, by the lack of a valid copyright registration for the photograph at issue.

6. ***No Statutory Damages or Attorneys' Fees.*** Mr. Pyle may not recover statutory damages or attorneys' because, on information and belief, either (1) at the time the alleged infringement commenced, the photograph at issue was unpublished and unregistered or (2) at the time the alleged infringement commenced, the photograph was published and unregistered and was not registered within three months after first publication of the photograph.

7. ***Failure to State a Claim.*** The Complaint is barred, in whole or in part, because it fails to state a claim upon which relief can be granted.

8. ***Statute of Limitations.*** The Complaint is barred, in whole or in part, because it is barred by the statute of limitations.

### **PRAYER FOR RELIEF**

Getty Images prays for relief as follows:

A. Dismiss Mr. Pyle claims with prejudice;

- B. Award Getty Images its costs incurred in connection with this lawsuit;
- C. Award Getty Images its attorneys' fees to the extent permitted by law; and
- D. Grant further relief as this Court may deem just, lawful, and equitable.

Dated: New York, New York  
June 13, 2016

Respectfully submitted,

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